

Tamarac Convalescent Center and 1115 Nursing Home Hospital and Service Employees Union-Florida, Petitioner. Case 12-RC-7782

April 24, 1995

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY MEMBERS BROWNING, COHEN, AND TRUESDALE

The National Labor Relations Board, by a three-member panel, has considered objections to an election held November 18, 1994, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 29 for and 24 against the Petitioner, with 1 challenged ballot, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and brief, has adopted the hearing officer's findings¹ and recommendations,² and finds that a certification of representative should be issued.

¹The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

We reject the Employer's motion to reopen the hearing and for a de novo hearing. In particular, we find no merit to the Employer's argument that a hearing is required to take testimony from the Petitioner's president, whom the Employer subpoenaed in support of its objection that the Union improperly provided free gifts and other financial remuneration to eligible voters. The hearing officer properly quashed this subpoena, at the Petitioner's request, because the Employer proffered no basis for its claim that the Union improperly granted benefits to unit employees.

²In adopting the hearing officer's finding that Angell Charles, the Petitioner's election observer, and interpreter Christana Villard did

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for 1115 Nursing Home Hospital and Service Employees Union-Florida, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time certified nursing assistants, dietary employees, activities aides, maintenance employees, medical records employees and central supply employees employed by the Employer at its facility located at 7901 NW 88th Avenue, Tamarac, Florida; *excluding* all other employees, including registered nurses, licensed practical nurses, office clerical employees, housekeeping employees, laundry employees, guards and supervisors as defined in the Act.

not engage in objectionable conduct during the polling period, we agree with the hearing officer that their conduct, measured objectively, was insufficient reasonably to affect the votes of other unit employees.

The Employer argues that Villard's testimony must be stricken because there is no evidence that the General Counsel gave Villard written permission to testify, as required under Sec. 102.118(a)(1) of the Board's Rules & Regulations. Even assuming, *arguendo*, that Villard, an independent translator hired by the Region to interpret for employees during the election, was the Region's "specially designated agent" under Sec. 102.118(a)(1), there is no support for the proposition that written permission was *not* secured from the General Counsel, whose counsel, in fact, called the witness. Further, even if written permission was not obtained, the Employer failed to raise an objection until its posthearing brief to the hearing officer.

Member Browning rejects the Employer's argument solely on the grounds that the Employer did not raise this basis for objecting to the interpreter's testimony before the hearing officer at the hearing itself, but has instead asserted it only belatedly in its posthearing brief to the hearing officer.